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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/139,298      | 08/25/1998  | RICHARD M. ANDERSON  | ARM-11206/06        | 5160             |

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EXAMINER

SHERRER, CURTIS EDWARD

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1761

DATE MAILED: 02/08/2002

19

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**Application No.  
**09/139,298**Applicant(s)  
**Anderson**Examiner  
**Curtis E. Sherrer**Art Unit  
**1761**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on Nov 26, 2001

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1, 2, 4-8, 12-14, 16, 18, and 19 is/are pending in the application.

4a) Of the above, claim(s) 12-14 is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1, 2, 4-8, 16, 18, and 19 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20) ☐ Other:

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### Part III DETAILED ACTION

#### *Priority*

1. It is noted that this application appears to claim subject matter disclosed in prior copending Application No. 08/940,107, filed 9/29/97. The current status of all nonprovisional parent applications referenced should be included.

#### *Drawings*

2. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "customer delivery device" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

#### *Claim Rejections - 35 USC § 112*

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 2, 4-8, 16, and 18-19 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to

reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant amended the claims with the phrase “customer delivery device” and “consumer” (rather than customer) and specification basis for this phrase was not found.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 2, 4-8, 16, and 18-19 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 1 is indefinite because there is no antecedent basis for the phrase “customer interface.” See line 18 of claim. It is assumed for the purposes of the instant action that the phrase should be “consumer interface.”

9. Claim 1 is also indefinite because the phrase “delivery device” is unknown.

10. Claim 2 is indefinite because it appears to broaden, rather than narrow the Markush grouping of claim 1.

11. Claim 19 is indefinite because there is no antecedent basis for the phrase “initiating step.”

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12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1, 2, 4-8, 16, and 18-19 are rejected under 35 U.S.C. § 103 as being unpatentable over Litwak (Supermarket Business) or Muskai (PC Magazine) in view Stear (Handbook of Breadmaking Technology) and in further view of Stern et al. (U.S. Pat. No. 5,054,059).

14. Litwak, Muskai, Stear and Stearn et al. teach that cited in previous Office Actions. While applicant has replaced the term “customer” with consumer,” this new term is interpreted broadly, i.e., as a “consumer of goods and services., rather than as it might narrowly be construed, e.g., someone who actually eats the product of the process. Therefore, it is considered that the prior art teaches this limitation.

### ***Response to Arguments***

15. Applicant's arguments filed 12/06/01 have been fully considered but they are not persuasive.

16. Again, applicant argues that the prior art does not teach or make obvious the instantly claimed invention because the prior art is directed to a different problem.” In response to Applicant's argument, the fact that Applicant has recognized another advantage which would

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flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

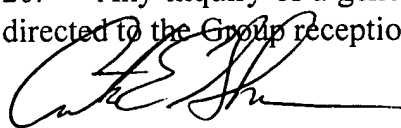
17. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### *Conclusion*

18. No claim is allowed.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30. The **fax phone number** for this Group is (703)-305-3602.

20. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Curtis E. Sherrer  
Primary Examiner  
February 7, 2002